

**REMARKS**

**A. The Section 102 Rejections of Claims 1-5, 10-15 and 19-22**

Claims 1-5, 10-15 and 19-22 were rejected under 35 U.S.C. §102(e) as being unpatentable over Eldering, U.S. Patent Application Publication No. 2005/0193410 (“Eldering”). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Each of the claims of the present invention includes the feature of transmitting/supplying one or more program streams (“transmissions”) encapsulated in Internet Protocol (IP) packets *from* a head end node to one or more egress nodes via an ATM switched network. Eldering does not disclose such transmissions.

As the Examiner admits in the Office Action (page 10), Eldering does not disclose the claimed transmissions over an ATM network.

Because Eldering does not disclose each of the features of claims 1-5, 10-15 and 19-22 it cannot anticipate these claims under 35 U.S.C. §102(e). Accordingly, Applicants respectfully request withdrawal of the rejections and allowance of claims 1-5, 10-15 and 19-22.

As a final note, the Applicants agree with the Examiner that the Applicants unwittingly excluded the Internet as a form of a “switched” network in their last response. To the extent this caused confusion, the Applicants apologize.

**B. The Section 103 Rejection of Claims 6-9 and 16-18**

Claims 6-9 and 16-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Eldering in view of U.S. Patent No. 5,544,161 to Bigham et al., (“Bigham”). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Initially, Applicants note that claims 6 and 16 have been cancelled; their subject matter having been incorporated into claims 1, 12 and 20. Therefore, the remaining rejected claims, namely, claims 7-9, 17 and 18 now depend on either independent claim 1 or 12.

Next, because the remaining rejected claims depend on either claims 1 or 12 they are patentable over the combination of Eldering and Bigham for the reasons set forth above with respect to claims 1 and 12 and because Bigham does not overcome the deficiencies of Eldering.

In more detail, though Bigham discloses an ATM network, it does not disclose or suggest the transmission of one or more program streams encapsulated in IP packets *from* a head end node to one or more egress nodes via an ATM-based switched network, as in the claims of the present invention. Rather, Bigham’s transmissions appear to be over an ATM network *to* a head-end (e.g., broadcast consolidation section 100, see column 10, lines 54-55).

In sum, Applicants respectfully submit that the subject matter of claims 7-9, 17 and 18 would not have been obvious to one of ordinary skill in the art at the time the present application was filed from a reading of the disclosures of Eldering and Bigham.

Applicants respectfully request withdrawal of the pending rejections and allowance of claims 7-9, 17 and 18.

**C. The Section 103 Rejection of Claim 22**

Claim 22 was rejected under 35 U.S.C. §103(a) as being unpatentable over Eldering in view of the Examiner's Official Notice. Applicants respectfully disagree and traverse this rejection for at least the following reasons.

Initially, Applicants note that claim 22 depends on claim 20 and is therefore patentable over the combination of Eldering and the Examiner's Official Notice for the reasons set forth above with respect to claim 20 and because the Examiner's Official Notice does not overcome the deficiencies of Eldering.

More specifically, the combination of Eldering with the Examiner's Official Notice does not disclose or suggest transmission of one or more encoded program streams encapsulated in IP packets for time-delayed delivery *from* a head end node to one or more egress nodes via an ATM-based switched network, as in the claims of the present invention. Accordingly, Applicants respectfully request withdrawal of the pending rejection and allowance of claim 22.

In the event this response does not place the present application in condition for allowance, Applicants request that the Examiner contact the undersigned at (703) 266-3330 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

**CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC.**

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